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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 J.E.S.,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL SECURITY,

15 Defendant.  
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Case No. 1:21-cv-000784-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENYING  
PLAINTIFF'S APPLICATION TO  
PROCEED *IN FORMA PAUPERIS* AND  
REQUIRING PLAINTIFF TO PAY THE  
FILING FEE AND DIRECTING CLERK OF  
THE COURT TO RANDOMLY ASSIGN A  
DISTRICT JUDGE

(ECF Nos. 2, 5)

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

20 Plaintiff J.E.S., by his guardian ad litem Katrina Martinez, filed a complaint on May 14,  
21 2021, challenging a final decision of the Commissioner of Social Security denying his  
22 application for disability benefits. Plaintiff did not pay the filing fee in this action and instead  
23 filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)

24 On May 17, 2021, an order issued finding that Plaintiff's application to proceed *in forma*  
25 *pauperis* did not demonstrate entitlement to proceed in this action without prepayment of fees.  
26 (ECF No. 5.) Plaintiff was ordered to either file a long form application to proceed without  
27 prepayment of fees or pay the filing fee within twenty days. (*Id.*) Plaintiff has not filed a long  
28 form application to proceed without prepayment of fees, paid the filing fee, or otherwise

1 responded to the May 17, 2021 order.

2 In order to proceed in court without prepayment of the filing fee, a plaintiff must submit  
3 an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28  
4 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a  
5 privilege and not a right. Rowland v. California Men’s Colony, Unit II Men’s Advisory Council,  
6 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)  
7 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of  
8 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need  
9 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it  
10 states that due to his poverty he is unable to pay the costs and still be able to provide himself and  
11 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.  
12 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees  
13 is an exercise of the district court’s discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th  
14 Cir. 2015).

15 In assessing whether a certain income level meets the poverty threshold under Section  
16 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department  
17 of Health and Human Services. See, e.g., Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL  
18 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL  
19 1149442, at \*2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

20 Based on the income reported in Plaintiff’s application to proceed *in forma pauperis*, of  
21 \$3,200.00 per month, Plaintiff’s household income is \$38,400.00 per year. The 2021 Poverty  
22 Guidelines for the 48 contiguous states for a household of four is \$26,500.00. 2021 Poverty  
23 Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last visited May 17, 2021). Based on the  
24 information provided, the income is well beyond the poverty level. Plaintiff was ordered to file a  
25 long form application to be provided with an opportunity to demonstrate that he is entitled to  
26 proceed without prepayment of fees in this action and he did not do so. The Court finds that  
27 Plaintiff is not entitled to proceed without prepayment of fees in this action.

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1 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's application to proceed  
2 *in forma pauperis* be DENIED and Plaintiff be ordered to pay the \$402.00 filing fee for this  
3 action.

4 The Clerk of the Court is DIRECTED to randomly assign this matter to a district judge.

5 This findings and recommendations is submitted to the district judge assigned to this  
6 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**  
7 **(14) days** of service of this recommendation, Plaintiff may file written objections to this findings  
8 and recommendations with the court. Such a document should be captioned "Objections to  
9 Magistrate Judge's Findings and Recommendations." The district judge will review the  
10 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The  
11 parties are advised that failure to file objections within the specified time may result in the  
12 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
13 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14  
15 IT IS SO ORDERED.

16 Dated: June 22, 2021

  
UNITED STATES MAGISTRATE JUDGE